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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE FL 32614

MAILED

SEP 15 2009

OFFICE OF PETITIONS

In re Application of	:	
Liu et al.	:	
Application No. 09/807,783	:	DECISION ON PETITION
Patent No. 6,884,422	:	PURSUANT TO
Filed: June 1, 2001	:	37 C.F.R. § 1.28(c)
Issued: April 26, 2005	:	
Attorney Docket No. CCP-100	:	
Title: FREEZE-DRIED HEPATITIS	:	
A ATTENUATED LIVE VACCINE AND	:	
ITS STABILIZER	:	

This is a notice regarding your submission of March 16, 2009, which is properly treated as a request for acceptance of a fee deficiency submission under 37 C.F.R § 1.28(c). On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

- (a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
- (b) The small entity fee actually paid, and when;
- (c) The deficiency owed amount (for each fee erroneously paid); and

- (d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity.

It does not appear that Petitioner has identified the small entity fee that was actually paid, when the small entity fee was actually paid, the deficiency owed amount, or the total deficiency payment owed. However, Office records indicate that on October 27, 2008, \$ 490 was submitted to the Office. As such, the requirement that Petitioner must provide the Office with the amount of the small entity fee that was actually paid along with when the small entity fee was actually paid, the deficiency owed amount, and the total deficiency payment owed is waived, *sua sponte*.

Your fee deficiency submission under 37 C.F.R. § 1.28 is hereby accepted. The petition is **GRANTED** accordingly.

This patent is now listed as a large entity.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted.

A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at <http://www.uspto.gov/web/forms/sb0123.pdf>.

A blank fee address form may be found at <http://www.uspto.gov/web/forms/sb0047.pdf>.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.¹

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: CPI Packages Inc.
414 Hungerford Drive
Third Floor
Rockville, MD 20850

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).